United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

JANUARY TERM, 1908.

No. 1862. 538

No. 24, SPECIAL CALENDAR.

LOUIS R. PFIEFFER, PLAINTIFF IN ERROR,

vs.

UNITED STATES OF AMERICA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED FEBRUARY 3, 1908.

Court of Appeals, District of Columbia

JANUARY TERM, 1908.

No. 1862.

No. 24, SPECIAL CALENDAR.

LOUIS R. PFIEFFER, PLAINTIFF IN ERROR,

vs.

UNITED STATES OF AMERICA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 12, 1908.

In the Court of Appeals of the District of Columbia.

No. 1862.

LOUIS R. PFIEFFER, Plaintiff in Error,
vs.
UNITED STATES OF AMERICA.

1 In the Police Court of the District of Columbia, November Term, A. D. 1907.

UNITED STATES, Plaintiff,
vs.
LOUIS R. PFIEFFER, Defendant.

Be it remembered, that in the Police Court of the District of Columbia, at the City of Washington, in the said District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Information.

In the Police Court of the District of Columbia, November Term, A. D. 1907.

DISTRICT OF COLUMBIA, *ss:*

Daniel W. Baker, Esquire, Attorney of the United States in and for the District of Columbia, who, for the said United States, prosecutes in this behalf, by Ralph Given, Esquire, one of his assistants, comes here into Court, at the District aforesaid, on the twenty-sixth day of November in the year of our Lord one thousand nine hundred and seven in this said Term, and for the said United
2 States, gives the Court here to understand and be informed, on the oath of one Howard Vermillion that one Louis R. Pfieffer, late of the District aforesaid, on the third day of July, in the year of our Lord one thousand nine hundred and seven, with force and arms, at the District aforesaid, and within the jurisdiction of this Court, did then and there, within the City of Washington, in the said District of Columbia, unlawfully bet and gamble the sum of one dollar in the national currency and money of the said United States, with one David Smith, on the result of a certain running race of horses against the form of the statute in such case made and provided, and against the peace and Government of the United States of America.

Whereupon, the said Attorney of the United States, who, in this behalf, prosecutes for the said United States, in manner and form as aforesaid, prays the consideration of the Court here in the premises, and that due proceedings may be had against the said Louis R. Pfieffer in this behalf to make him answer to the said United States touching and concerning the premises aforesaid.

Second Count.

In the Police Court of the District of Columbia, November Term, A. D. 1907.

DISTRICT OF COLUMBIA, *ss:*

Daniel W. Baker, Esquire, Attorney of the United States in and for the District of Columbia, who, for the said United States, prosecutes in this behalf, by Ralph Given, Esquire, one of his assistants, comes here into Court, at the District aforesaid, on the twenty-sixth day of November, in the year of our Lord one thousand nine
3 hundred and seven in this said Term, and for the said United States, gives the Court here to further understand and to be further informed, on the oath of one Howard Vermillion that said ——— ———, late of the District aforesaid, on the fifteenth day of June, in the year of our Lord one thousand nine hundred and seven, with force and arms, at the District aforesaid, and within the jurisdiction of this Court, did then and there, within the City of Washington, in the said District of Columbia, unlawfully bet and gamble the sum of ten dollars in the national currency and money of the United States with one John Simmons, on the result of a certain running race of horses against the form of the statute in such case made and provided, and against the peace and Government of the United States of America.

Whereupon, the said Attorney for the United States, who, in this behalf, prosecutes for the United States, in manner and form as aforesaid, prays the consideration of the Court here in the premises, and that due proceedings may be had against the said Louis R. Pfeiffer in this behalf to make him answer to the said United States touching and concerning the premises aforesaid.

Third Count.

In the Police Court of the District of Columbia, November Term, A. D. 1907.

DISTRICT OF COLUMBIA, *ss:*

Daniel W. Baker, Esquire, Attorney of the United States in and for the District of Columbia, who, for the said United States, prosecutes in this behalf, by Ralph Given, Esquire, one of his assistants, comes here into Court, at the District aforesaid, on the twenty-sixth day of November in the year of our Lord one thousand nine hundred and seven in this said Term, and for the said United States,

gives the Court here to further understand and to be further informed, on the oath of one Howard Vermillion that said
4 Louis R. Pfeiffer, late of the District aforesaid, on the first day of July in the year of our Lord one thousand nine hundred and seven, with force and arms, at the District aforesaid, and within the jurisdiction of this Court, did then and there, within the City of Washington, in said District of Columbia, unlawfully bet and gamble certain sums of money, in the national currency and money of the said United States, with certain persons, on the result of a certain running race of horses; which said sums of money and said persons are to the said Attorney of the United States and his said assistant unknown, against the form of the statute in such case made and provided, and against the peace and Government of the United States of America.

Whereupon, the said Attorney of the United States, who, in this behalf, prosecutes for the said United States, in manner and form as aforesaid, prays the consideration of the Court here in the premises, and that due proceedings may be had against the said Louis R. Pfeiffer in this behalf to make him answer to the said United States touching and concerning the premises aforesaid.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia,
By RALPH GIVEN,
His said Assistant.

Personally appeared Howard Vermillion before me this twenty-sixth day of November, A. D. 1907, and being duly sworn according to law doth declare and say that the facts as set forth in the foregoing information are true.

RALPH GIVEN,
Assistant Attorney of the United States in and for the District of Columbia.

5 In the Police Court of the District of Columbia, United States Branch.

No. 155,635.

THE UNITED STATES
vs.
LOUIS R. PFEIFFER.

Bill of Exceptions.

Be it remembered, that on the trial of this cause which came on for hearing on the 26th day of November, 1907, before the Presiding Justice in the United States Branch of the Police Court, the defendant was charged by an information, a certified copy of said information being filed herewith marked Exhibit A, and prayed to be

read as a part hereof, with a violation of Section 869 of the Code of Laws for the District of Columbia. The defendant pleaded "NOT GUILTY," and the following proceedings were had:

6 In the Police Court.

THE UNITED STATES
vs.
LOUIS R. PFEIFFER.

WASHINGTON, D. C., *November* 26, 1907.

The Court met at 10 o'clock A. M.

Present: The Presiding Judge; Mr. Ralph Given, on behalf of the Government; Mr. William E. Ambrose, on behalf of the defendant.

Hereupon the Clerk called the roll of the jury.

Mr. GIVEN: Your Honor, I have substituted a new information. The language is slightly different and I ask that the defendant be arraigned. There is a difference in the phraseology.

Mr. AMBROSE: I suppose this would be a good ground for a continuance if I should so desire.

Mr. GIVEN: I do not think you are taken by surprise by the substitution of the new information.

Mr. AMBROSE: I shall object to the substitution of the
7 new information.

Mr. AMBROSE: I shall object to the substitution of the new information for the prior information and will ask for a continuance of the cause in order to enable the defendant to be better advised how to plead.

Mr. GIVEN: Your Honor, I submit that the defendant is not taken by any surprise. The difference in the information is not such that they be taken by surprise in any way.

COURT: Let me see it.

(Hereupon the new information was handed to the Court.)

COURT (after reading): The first count is the same as far as I can see. I do not see any difference in the first count.

Mr. GIVEN: There is none whatever. The only difference is the substitution of a second count naming a party—a witness and then the third count. Now, that evidence could be introduced under the second count of the first information. It is just to make it more specific. I have just made that count to make it more specific. That same proof could have been offered under the same count. It is just to make it more specific.

COURT: I will hear anything more you desire to say, Mr. Ambrose.

Mr. AMBROSE: I simply have made my motion, Your Honor, and I think I am entitled to a continuance.

COURT: I overrule your motion.

Mr. AMBROSE: You will please grant me an exception.

COURT: Yes, sir.

(Exception noted.)

Mr. AMBROSE: You understand, Your Honor, my motion is to have a continuance on the ground that a new information has been filed and that is overruled and exception granted. Now, Your Honor, I wish to exercise my right *to* as to peremptory challenges.

COURT: You have three peremptory challenges.

8 Mr. AMBROSE: I should like to exercise my right of peremptory challenges.

Mr. GIVEN: Has the defendant pleaded to this new information? I suggest that the defendant plead to the new information.

COURT: Yes, sir. Do you want to plead to the new information?

Mr. AMBROSE: Very well, your Honor.

CLERK: Do you waive the reading?

Mr. AMBROSE: Yes, sir, I waive the reading. I now renew my motion for a continuance.

COURT: It is overruled.

(Exception noted.)

Hereupon the defendant pleaded not guilty, and through his counsel demanded a jury trial.

COURT: Have you called the jury?

CLERK: I have already called it.

Mr. AMBROSE: I shall like to challenge peremptorily Mr. Fulton R. Gordon.

CLERK: He is not on it.

Mr. AMBROSE: Mr. Joseph F. Webber.

COURT: Have you a list of jurors?

Mr. AMBROSE: I have it before me. I also challenge Mr. Arthur Copeland. Mr. Hummer is a very busy man and I should like to let him go to his work. I think I have exhausted my peremptory challenges.

COURT: I do not know whether Mr. Given wishes to challenge any jurors or not.

Mr. AMBROSE: I should like to examine the jurors on their *voir dire*.

COURT: All right.

9 Mr. GIVEN: I just wish to ask the jury one question. The defendant is charged for violating section 869 of the Code, or what is known as making a hand book or making a bet on a race of horses. I will ask you, gentlemen, if any of you know the defendant in a business way, or in any way, that would embarrass you in sitting upon this case. That is all I want to ask you.

(There was no response.)

Mr. AMBROSE: I should like to ask the gentlemen of the jury this question, as to whether or not any of them read any of the articles that appeared in the daily newspaper in this city known as the Star some weeks ago, or rather during the summer, in fact making attacks upon the so-called hand book men in the District, and whether having read it you have been in any wise influenced by these articles to such an extent that you could not fairly weigh the evidence in this case and determine the issue that the evidence raises, whatever it may be.

JUROR: I have, sir.

Mr. AMBROSE: Your name is what?

JUROR: Fuller.

Mr. AMBROSE: Has your mind been influenced either for or against the Government in this case by the evidence that has been adduced in the newspapers?

JUROR: I cannot say that it has.

Mr. AMBROSE: I am satisfied with the jury, Your Honor.

Mr. GIVEN: The Government is satisfied.

(Hereupon the jury was sworn.)

Mr. GIVEN (addressing the jury in his opening statement): If Your Honor pleases, and gentlemen of the jury, the defendant, Louis Pfieffer, is charged under section 869 of the Code, and I may read it to you, gentlemen, so that you might sift the testimony as it goes along. (Counsel read as follows:)

10 "SEC. 869. POOL SELLING, AND SO FORTH.—It shall be unlawful for any person or association of persons in the cities of Washington and Georgetown, in the District of Columbia, or within said District within one mile of the boundaries of said cities, to bet, gamble, or make books or pools on the result of any trotting race or running race of horses, or boat race, or race of any kind, or on any election or any contest of any kind, or game of base ball. Any person or association of persons violating the provisions of this section shall be fined not exceeding five hundred dollars or be imprisoned not more than ninety days, or both." The defendant is charged in this information that on or about the first part of July he made a bet on a running race of horses with one David Smith; he is also charged in another count in the information with making a bet on the 10th or 15th of June with one John Simmons on a running race of horses. This, gentlemen, is what is known as hand book making. That is the term that has been given to it as a designation of the case. But what this section number 869 of the Code prohibits is the making of bets on a race of horses or base ball or any game of that kind, but in this particular incident he is charged with making bets on a running race of horses. You can take each one of these counts and take the testimony of each witness and then you can both witnesses and take them into consideration with both counts. It is your province that if you believe beyond a reasonable doubt that the defendant did make a bet as is charged in either one of these counts you shall so find.

Mr. AMBROSE: I reserve my opening. I will ask that the witnesses be excluded.

Mr. GIVEN: I have only two witnesses. One is present and the other has not come yet.

11 Mr. AMBROSE: I shall object to his being in the room at any time during the progress of the testimony.

Mr. GIVEN: He is not here now.

Mr. AMBROSE: If he comes in during any part of the testimony I shall insist that he be excluded.

COURT: Let the witnesses on both sides come forward and be sworn and then be excluded.

Hereupon counsel for the Government called as a witness under the first count Mr. DAVID R. SMITH, who testified at length.

* * * * * * *

JOHN SIMMONS, called by the Government under the second count, and being duly sworn, testified as follows:

By Mr. GIVEN:

Q. What is your full name, Mr. Simmons? A. John Simmons.
Q. Mr. Simmons, do you know Mr. Pfieffer here? A. Yes, sir.
Q. Do you remember seeing him in last June of this present year? A. Yes, sir, I do not know about June, but it was last summer. I cannot tell you exactly what date.
Q. It was during the summer months of this past year? A. Yes, sir.
Q. Where did you see him? A. On 10th street.
Q. Did you have any conversation with him? A. Yes, sir, I had a conversation with him.
12 Q. What was it about? A. I just gave him a little bet. That was all.
Q. You gave him a little bet. Just stand up straight and speak out. These gentlemen over there want to hear you. (Counsel indicates the jury.) A. Yes, sir. I am a little deaf.
Q. Will you explain to the jury what you mean by you made a little bet with him. A. I made a little bet on a horse.
Q. Do you remember the horse? A. No, sir.
Q. Do you know anything about what the race was? A. I do not know exactly. I think it might be in Canada.
Q. What kind of a race was it? A. Running race.
Q. Do you remember how much you bet? A. Ten or fifteen or twenty dollars. I cannot keep account of it.
Q. Where is Mr. Pfieffer? Do you see him now? A. Sitting down there. (Witness indicates defendant.)
Q. Is that the man you bet with at that time? (Counsel indicates the defendant.) A. Yes, sir.
Q. It was in this city—in the city of Washington? A. It was on 10th street.
Q. Where was it? A. I think it was between the Avenue—between D and E streets.
Q. Whose place was it, do you know? A. I don't know whether it was inside or outside of the place. It was a cigar store.
13 Q. Do you recollect the horse? A. No, sir, I didn't keep that much memory.
Q. And that is the gentleman you made the bet with, is it not? (Indicating defendant.) A. Yes, sir.

Cross-examination:

By Mr. AMBROSE:

Q. Mr. Simmons, what is your business, please? A. I am in the horse business.
Q. Horse trading? A. Yes, sir, I keep a stable on the corner of 12th and Ohio avenue.
Q. How long have you known Mr, Pfieffer? A. I have known Mr. Pfieffer about two years by sight. By seeing him, that is all.

Q. You do not remember when it was you made this bet with him, do you? A. I cannot tell exactly.

Q. Can you detail the conversation you had with him on that day? Just give it as near as you can. A. No, sir, I cannot keep any account of anything like that.

Q. You do not remember the day? A. No, sir.

Q. You do not remember the amount of money? A. No, sir.

Q. You do not remember the horse? A. No, sir.

14 Q. You do not remember how much it was? A. I cannot testify. It was about ten dollars.

Q. You do not remember where the race was to be run, do you? A. No, sir, I do not know whereabouts.

Q. You do not know that there was to be a race run on that day? A. I don't know where it was to swear to it. I could not tell you.

Q. And you cannot tell what you told him to do with the money? A. No, sir.

Q. You cannot tell whether you told him to take that money somewheres and place it for you? A. I do not remember. I just gave Mr. Pfieffer the money and I walked out and did not come back any more because I did not win.

Q. You asked him to place your money for you? A. Yes, sir.

Q. And you do not know whether Mr. Pfieffer took your bet to somebody else of your own knowledge? A. I gave the money to Mr. Pfieffer.

Q. But you do not know whether he was making the bet with you or somebody else? A. No, sir.

Q. You do not know? A. No, sir.

Q. And that is the only recollection you have of the entire incident? A. Yes, sir.

Q. Do you know officer Vermillion—detective Vermillion? He is a tall fellow with dark hair. Did he speak to you about this

15 case? A. No, sir.

Q. Who was the first officer who spoke to you about it? A. No, sir, nobody spoke to me at all. They subpœnaed me here.

Q. Where did you go when you were subpœnaed to this court? A. No, sir, to the other one.

Q. You told them the same thing that you have told us? A. Yes, sir.

Q. You have an indistinct recollection of giving this man a bet, but as to the amount you gave him or whether you gave it to him to bet for you, you do not remember? A. I remember of giving him money.

Q. And that is all? A. Yes, sir.

Q. You don't know or remember whether he was the one who made the bet or whether you simply gave it to him to place for you? A. No, sir.

Redirect examination.

By Mr. GIVEN:

Q. With whom did you bet? Did you know anybody else?

By a JUROR:

Q. That was the only bet you ever made? A. I may have made one or two. I didn't keep any recollection.

Q. With this gentleman? A. I don't know whether I made one bet or two bets.

Q. That is the only bet you ever made with that gentle-
16 man? A. To my recollection. I didn't keep any account. It is all off if I lose.

By Mr. GIVEN:

Q. You knew nothing about this until you were sent for? A. No, sir.

Mr. GIVEN: That is the Government's case.

Mr. AMBROSE: I want a ruling on this testimony. I move to exclude the testimony of Mr. Simmons as being insufficient to maintain either of the counts of this information. I will take your Honor's ruling on that and note an exception. I move to strike it out on the ground that it is vague, indefinite and insufficient to support either of the three counts in the information.

COURT: It is overruled.

Mr. AMBROSE: I note an exception.

(Exception granted.)

Hereupon the defendant put in the following testimony.

LOUIS R. PIEFFER, the defendant, sworn on his own behalf, testified as follows:

By Mr. AMBROSE:

Q. Mr. Pfieffer, you are the defendant, I believe, in this case? A. Yes, sir.

Q. What is your place of business, or rather what is your business? A. Café manager.

Q. You have been charged with making a bet on the 3rd of July with a Mr. David Smith on a running race of horses in the year 1907. Will you state whether or not on the 3rd day of July
17 in the year 1907 you made a bet with Mr. David Smith on any running race of horses or any other race of horses? A. I did not.

Q. Have you within the past three years prior to the 3rd day of July, 1907, made a bet or gambled with David Smith on a running race of horses, or any other horses, or any other race here or elsewhere? A. No, sir.

Q. Did you within that period, and more particularly on the 15th day of June, 1907, bet or gamble on a running race of horses, or take a bet from John Simmons? A. I did not.

Q. Have you made a hand book? A. I never was able to make a hand book.

Q. Within the past four years have you taken any bets? A. I never was able to make a hand book. I never had money enough to back it.

Q. Mr. Smith stated that he came to you on the 3rd day of July and had a conversation with you relative to the horse racing and that you and he then bet one dollar on a parley of three horses. Is that true or false? A. It is not so. I have always told Mr. Smith that I was not interested in any book, financially or in any other way.

Q. Do you know Billings, the other man referred to by Mr. Smith? A. I knew a man who went around there named Billings. He is also called "Shorty" or "Whiskers."

Q. Did you ever "welch" on Mr. Smith in any way? A. No, sir, I never made a bet with him.

Q. You never made a bet with him? A. No, sir.

18 Q. You do yourself play the races at times? A. I might often.

Q. You have at times taken money to the Bennings race track? A. I have taken it out to Bennings and took it to the pool room in Westport near Baltimore.

Q. Mr. Smith said you bet or made some bets with him—there were some bets he had placed with you? What explanation have you to make about that? A. The only explanation I could make, is that he wanted to get down some money and I was either going down to Bennings last spring or was going over to Baltimore—Westport and he asked me if I would take the money over for him. I did take it over for him.

Q. And sometimes you brought back money for him? A. I never brought back a cent for him. He never picked a winner.

Q. He never did? A. Not with the bets he gave me.

Q. You had no interest whatsoever in the outcome of any of these bets yourself, financially or otherwise? A. None whatever.

Mr. GIVEN: I give notice that I expect to call witnesses in rebuttal. They are present in the room. I do not know whether counsel wants them to be excluded or not.

COURT: Do you want them excluded?

Mr. AMBROSE: No, sir.

Mr. GIVEN: The rule of exclusion would not interfere with the rebuttal.

Mr. AMBROSE: I hardly think so myself.

Mr. GIVEN: I offer to do that simply that there will be no misunderstanding about it.

19 Mr. AMBROSE: I hardly think the rule applies to rebuttal testimony, Mr. Given.

By Mr. AMBROSE:

Q. Do you remember of seeing Mr. Smith on the 3rd day of July? A. No, sir.

Q. You never made any bets with him or made any bets or gambled on any running race or trotting race or any other race within the past three years prior to July 3rd, 1907? A. No, sir. I used to see him coming around there and very often asked about it and he would say "give that to "Whiskers" or "Shorty" or to somebody else."

Q. But you did not have anything to do with it? A. If I told him once I have told him one hundred times that I was not interested in any book, financially or otherwise.

Cross-examination.

By Mr. GIVEN:

Q. Mr. Pfieffer, you used to be around at 1003 E street, did you not? A. No, sir.

Q. Do you know where 1003 E street is? A. Yes, sir.

Q. Do you know who keeps there—what is the place? A. Mr. Dorsey used to keep there.

Q. Did you live there? A. No, sir.

Q. Room there? A. No, sir.

Q. Did you used to go there sometimes? A. The only time I ever went over there was when I had dealings with him. I bought a horse from him.

20 Q. How did you come to tell Smith to come at 1003 E street, that it was all the same place and he could place his bets there. A. I do not recollect telling Mr. Smith that.

Q. You won't say it is not so? You do not say positively you did not? A. I will not say positively; no, sir.

Q. You say that you have taken bets for him, but you claim to have taken them over to Baltimore or some other place? A. He would ask me if I was going over to Baltimore and if I would take a bet for him and I told him yes.

Q. How many bets do you think you have taken in ten months back of July over there to the place that you spoke of? A. To the best of my recollection I took two over to Baltimore and one at Benning, and on one time he was outside of Bennings with his cab waiting for me.

Q. Do you remember taking any bets that were played in New York? That is, the race was run in New York? A. No, sir, I do not.

Q. You think that—— A. I do not know whether they were running in New York or Canada or New Orleans or where.

Q. And the only time you ever say you took any bets for him was when you were going to play for him at some other place? A. That is the best of my recollection.

Q. The best of your recollection. Don't you know positively? A. I cannot say positively. I did not.

Q. Now, what about Mr. Simmons. A. Well, Mr. Simmons was the same way. I was standing out on 10th street one time

21 and he came up and asked me if I knew where he could get a bet and I said there was nothing doing around and I told him I was going to Baltimore, down to Westport, and he asked me if I would take a bet for him with me. The pool rooms were running at Westport then.

Q. You say you did take it, but you took it over to Baltimore to play for him. You did not take the bet here? A. No, sir, I did not take the bet here.

Q. You did tell you were going over to bet. Do you think that he believed he was betting with you? A. I don't know what he believed. I told him I was going to Westport and put the money down myself. I bet on the races very often.

Q. How did he come to find you? A. I could not explain that.

Q. You say you did not have any money to back a hand book? A. No, sir, I had not money enough. I never was wealthy enough.

Q. How much do you consider it requires to make a hand book? A. Well, if I was going to make a hand book, for every dollar I took in I would want to have one hundred dollars to pay out.

Q. Do you not think six thousand dollars would start a hand book? A. No sir.

Q. You think a small hand book could not be run on six thousand dollars? A. No, sir.

Q. You had six thousand dollars when you were arrested, did you not? A. No, sir.

22 Q. You did not? A. No, sir.

Q. You went down to the bank and got five hundred dollars out? A. I have worked for fourteen years and a man ought to be able to save a little money in fourteen years.

Q. You say — do not think six thousand dollars enough to back a hand book? A. No, sir.

Q. How long have you been playing the races yourself? You said you had been playing them yourself. A. Yes, sir, I have.

Q. I did not ask that—it is not particularly necessary I do not think it any particular disgrace. A. I don't consider it a disgrace.

Q. I did not ask you for that purpose.

Mr. AMBROSE: Just answer the question.

A. Between 28 and 30 years.

Q. You say in the last three years you never made a bet with Mr. Smith or Mr. Simmons? A. Not to back it; no, sir. Not a bet made.

Q. I did not mean to back it. Did you take a bet and make it for him? A. No, sir, I did not make — bet with him.

Q. Did you say that it was Mr. Simmons that came up to this cigar store on 10th street near E Street? A. I did not say he came in the cigar store. I said the sidewalk in front of the cigar store.

Q. Your explanation of that bet is that he just asked you where he could place a bet and you told him you would take it over to Longport and play it for him. A. No, sir, not Longport, but Westport.

23 Redirect examination.

By Mr. AMBROSE:

Q. I dislike very much to correct your grammatical utterances, but I want to ask you this one thing: When you said to Mr. Given that "I did not make no bet," you meant you did not make any bet? A. Yes, sir, I did not make any bet.

By a JUROR:

Q. Please tell us this: Somebody said that somebody "welshed"

on a bet. What do you mean by that? A. Well, it is a term applied to where a man makes a bet and wins it and he does not get it.

(Hereupon counsel for the defendant explained fully to the jury what the term meant.)

By Mr. GIVEN:

Q. I asked you if you ran a lunch room? A. No, sir, café.

Q. You gave your occupation as a broker. What do you mean by broker? A. I was — broker at one time at Atlantic City.

Q. At the time of your arrest you gave your occupation as a broker. You meant your occupation some years ago. That is what you meant? A. I was a business broker in Atlantic City.

By Mr. AMBROSE:

Q. Not a stock broker? A. No, sir; it is too hard a game.

Hereupon the Government introduced certain testimony in rebuttal in reference to the first count.

* * * * * * *

24 Mr. AMBROSE: I have no prayers to offer in this case.

Mr. GIVEN: I shall, of course, ask the general charge of which I spoke of in my opening statement to the jury. It is nothing more than what your Honor will tell the jury that if they believe beyond a reasonable doubt that Mr. Smith made this bet with Mr. Pfieffer, the defendant, and that Mr. Simmons made this bet with Mr. Pfieffer—if they believe beyond a reasonable doubt they would be warranted in bringing in a verdict of guilty on each of these counts. Of course, it is the general proposition.

COURT: There are three counts.

Mr. GIVEN: I don't claim the third count.

COURT: Only on the two?

Mr. AMBROSE: First and second.

Mr. GIVEN: I do not claim anything on the third count, the general count, because the witnesses were not produced in support of that count. I suppose your general charge will practically cover every prayer that we could offer in a case of this kind. Your Honor's charge must cover every point that we would cover in the prayers. I guess possibly it might be well to eliminate the prayers and leave it to Your Honor's charge to cover all matters, both for the Government and for the defence.

Mr. AMBROSE: I am thoroughly in accord with that view.

Mr. GIVEN: I think the charge could cover the prayers better than we could if we had written prayers.

Hereupon counsel addressed the jury.

Hereupon the Court charged the jury as follows:

The COURT: Gentlemen of the jury, you have a very important part to take in the trial of this case. But your consideration
25 must be exercised without prejudice; without feeling or without bias. The jury stands between the Government and the citizen. It has a duty to perform to one and to the other, but in performing that duty it must stand neutral and not let feeling or

prejudice influence you in any way whatever. Your province is to determine the facts upon the evidence as submitted to you on the witness stand. It is my province and duty to give you the law applying to the case as presented. It is your duty to apply that law and find the facts and to make your report to the court upon those facts without, as I said, prejudice or bias. You have nothing to do with the question of whether the law was wise or unwise. You have nothing to do with the question of whether or not you are in favor of betting or do bet yourself or do not bet. As far as that question is concerned, you must leave it entirely out of the case and decide this, as all other cases, solely upon the evidence as you find it to be, giving the benefit of all reasonable doubt to the defendant.

As originally filed there were three counts, but the evidence as given has only referred to two of them. The third count is not to be considered by you. So that when you take this case into consideration in your jury room it will be upon the two counts, the first and second.

Then, you will find in each of them that a time is named; in one the 3rd day of July, and the other the 15th day of June; but the Government is not bound to prove those particular dates exactly, but they must show to you beyond a reasonable doubt that the defendant is guilty of one or the other within three years of the filing of this information. But as to the exact date of the 3rd of July or the 15th of June of the present year, it is not necessary for them to prove that fact. Neither is it necessary to prove, for instance, in the second count that ten dollars was bet as is alleged in that
26 count. If they prove to you beyond a reasonable doubt that any amount was bet, then, that will be sufficient to warrant you in finding a verdict of guilty. Now, the charge is under this count of betting—bet and gamble. A bet is money given by one and accepted by another—rather given by one and accepted by another, to depend upon the happening or non-happening of a certain event. In this case it was a running race of horses. In this case it is not necessary for the Government to prove that any race was run. The bet is made when the money is accepted as a bet. The horse may never run. There may never be such a horse in existence, for that matter. The thing that the law is intended to prohibit is accomplished when the money is given and accepted as a bet without reference to whether there is an actual race or any such horse in existence. It is a bet upon a running race if they bet upon such an event whether it actually occurred or not.

Now, as I understand the defence, it is not denied that money was accepted from Smith, but it is claimed by the defence that it was accepted with the understanding and knowledge that the money was to be taken by this defendant, as a messenger, to some place where betting was permitted, as Baltimore or some other place. I would not say, if I was a betting man and gave a bet to my friend Ambrose who was going to Baltimore and asked him to make the bet for me, that Ambrose thereby would be guilty of betting; but if I went to Mr. Ambrose and handed him a dollar with a slip naming the horse

and the bet and Mr. Ambrose did not disclose that he was not acting for himself and also did not disclose that he was acting merely as a messenger, then the bet would properly be considered in law as a bet between Mr. Ambrose and myself. So that the question comes in the case of Mr. Smith as to what occurred between them at the time upon that proposition. If the defendant accepted these sums
27 of money which Smith swore he paid to him and which the defendant acknowledged to have accepted, without in any way disclosing the fact as to how he accepted it, then, that would be sufficient evidence to warrant you, if you believe that, in finding the defendant guilty on the first count which is for making bets with Mr. Smith. If, however, you believe from the evidence—from all the evidence that when Mr. Smith took the bet to him it was agreed on the part of both of them that it was merely as a messenger that he took it, and that Smith gave it to him as a messenger for the purpose of taking it to some place, and did take it, then I could not charge you that he would be guilty of making a bet or gambling. But if a man, no matter what his own intention may be; no matter what his own purpose may be, does not disclose the fact that he is acting as a messenger only, he can be charged as principal. This same rule applies as well in civil cases. If a man, although in fact only an agent, does not disclose such agency, he can be held as principal. So it is in this case, if there was nothing disclosed by the defendant. If Mr. Smith gave him a bet and he took it without disclosing his purpose and accepted it in that way, then he could be charged as principal in that bet because a thing must be the act of two and not one. It is like a contract, the contract is the joining of the minds of two persons. Now, if the defendant, Mr. Pfieffer, did not disclose the fact, but accepted the money as a bet without disclosing anything further, then, he, under the law, would be a principal because he had not disclosed and there was no agreement between them that he was to act as an agent, but the understanding between the two was as shown by their acts.

There are two separate counts. You are to take them up and consider them separately, and find your verdict separately, you can find the defendant guilty on both, or not guilty on both, or guilty
28 on one, and not guilty on the other, as you, after your deliberation in your jury-room, may find your verdict ought to be. You can bring your verdict in as I have said.

Now, with regard to the other case. The same rules, as stated with regard to the Smith transactions, should be applied in your consideration of Simmon's testimony.

The fact that Mr. Simmons is not able definitely to state the time, or the place, or the amount—or the time, or amounts rather, because he does state the place—ought not to warrant you in rejecting his testimony. If you believe that he did make such a bet within the three years of the filing of the information, which was filed today—within three years of today, did make a bet with the defendant upon a running race of horses, then, notwithstanding the fact that he cannot tell you whether it was Five, or Ten, or Fifteen Dollars, and notwithstanding the fact that he cannot tell you the exact time

nearer than his statement, that it was in the summer time, that would not warrant you in rejecting his testimony if otherwise you believe he is telling the truth. You are the sole judges, gentlemen, as to the credibility of the witnesses—You are the sole judges to determine what is the truth; what is the fact. You have the right of determining whether you will believe this man or that man; whether you will believe this witness or that witness, and you can take into consideration his appearance on the stand and every other circumstance disclosed in the evidence to help you, as reasonable men, to determine which you will believe and what, as reasonable men, you believe the facts as disclosed by the evidence. You are to take the case and consider it carefully. Gentlemen, do not hurry the matter, and do not, because it is a little after two o'clock, rush your decision.
29 Take the matter up and consider it carefully and honestly as good citizens. As good and true men consider the facts as presented to you and bring in your verdict accordingly. I have instructed you, and I presume the Judge holding the other court has instructed you, upon what is a reasonable doubt. You are to find beyond a reasonable doubt. If a doubt is a reasonable one the defendant is entitled to it. If it is not a doubt, or a reasonable doubt, you are not to give him the benefit of it because you have a doubt, but if you have a reasonable doubt you are to give him the benefit of it because under our form of laws in the United States the government must prove to the satisfaction of the jury beyond a reasonable doubt that the defendant is guilty of the charges made in the information or the indictment.

Mr. AMBROSE: Your Honor's charge is a very fair and full one, and I have only to differ with your Honor on two minor aspects of the charge. I would like to note an exception to so much of the charge as pertains to the jury being instructed that they must find for the defendant—find for the government if they believe that the bet was made whether such a horse was in existence or not, or that the race was ever contemplated or ever run. I think Your Honor is in error there and I respectfully submit and ask for an exception.

COURT: I will stand by it.

Hereupon an exception was noted.

Mr. AMBROSE: Then, Your Honor, in reference to so much of the instruction to the jury as affects the question of there being a meeting of the minds on the part of the parties. I note an exception to that part of your charge. And also to so much of the charge where you say that if one or the other did not disclose that the party not disclosing is guilty. I think Your Honor is in error too about that
30 and would like to have an exception noted.

Hereupon an exception was noted.

COURT: Gentlemen of the jury, take the case and consider it on the first two counts.

Hereupon the jury retired to consider their verdict.

After deliberation the jury returned a verdict of "NOT GUILTY" on the first count and a verdict of "GUILTY" on the second count of the information. Thereupon William E. Ambrose, Attorney for the

Defendant, gave notice that he would prepare and file motions for a new trial and in arrest of judgment, said motions being filed herewith, and that he would later prepare a bill of exceptions, which is hereby presented to the Court.

And the defendant requested the Court to sign and seal this his bill of exceptions as and for the entire testimony and proceedings at the hearing of said cause, which is accordingly done, now for then, this 31st day of December, 1907.

I. G. KIMBALL,
Judge of the Police Court for the District of Columbia, U. S. Branch.

Indorsements: Filed Nov. 29, 1907. Joseph Y. Potts, Clerk Police Court D. C. Filed Nov. 29, 1907. Joseph Y. Potts, Clerk Police Court D. C. Submitted 11:30 A. M., Friday, Nov. 29, —07.

31 In the Police Court of the District of Columbia.

No. 155,635.

UNITED STATES
vs.
LEWIS R. PFEIFFER.

Comes now the defendant, Lewis R. Pfeiffer, by his attorney, William E. Ambrose, and moves the Court to arrest its judgment in the above entitled cause, and for reason therefor says:

First. That the information on which the defendant was arraigned and tried is insufficient and invalid, and was filed at the trial without giving defendant an opportunity to properly demur or to prepare for his trial.

Second. That the act on which the said information was based is unconstitutional, in that it unreasonably discriminates against part of the persons residing in the District of Columbia and denies the defendant and others equal and due protection of the law.

Third. For the reason that the verdict of the jury was based on evidence improperly, and contrary to law, admitted to be presented to them by the Court.

Fourth. That the evidence does not show any crime within the meaning of the act on which information was laid in that it fails to show either that any bet was made or gambling carried on at all, and that it fails to show that defendant made any bet or gambled.

Fifth. That the information on which defendant was tried sets forth no crime or misdemeanor known to the law.

(Signed) WM. E. AMBROSE,
Attorney for Defendant.

Ralph Given, Esq., Ass't U. S. District Attorney:

Please take notice that I will call up the foregoing motion in arrest of judgment before Mr. Justice Kimball in the Police Court

of the D. C. on Wednesday, December 4th, 1907, at 9:30 o'clock, or so soon thereafter as counsel may be heard.

(Signed) WM. E. AMBROSE,
Attorney for Defendant.

32 *Recognizance.*

In the Police Court of the District of Columbia, the 27th day of November, A. D. 1907.

UNITED STATES
vs.
LOUIS R. PFEIFFER.

The defendant, and Samuel H. Walker his surety, acknowledge themselves to be indebted to the United States, in the sum of five hundred Dollars, lawful money of the United States, to be levied of their and each of their goods and chattels, lands and tenements, upon conditon nevertheless, that if the said defendant shall personally appear before the Police Court of the District of Columbia from day to day, at the present and any future term thereof, until the said cause shall be finally disposed of and answer the charge of Bookmaking against him therein preferred, and shall not depart the Court without leave, then this recognizance to be void and of none effect,

(Signed) LOUIS R. PFEIFFER.
(Signed) SAMUEL H. WALKER.

Acknowledged in open Court before me
(Signed) JOSEPH Y. POTTS,
Clerk Police Court, District of Columbia.

[Endorsed:] No. 155635. Police Court, District of Columbia. Recognizance to Answer in the Police Court. United States *vs.* Louis R. Pfeiffer. $500. Samuel H. Walker, Surety. Taken the 27th day of Nov. A. D. 1907.

In the Police Court of the District of Columbia, 27th day of November, A. D. 1907.

Samuel H. Walker surety in the within recognizance, being duly sworn, says that he is worth, over and above all his debts and liabilities the sum of one hundred thousand dollars in real estate, situated in the District of Columbia; that a part of the real property so owned by him is described as follows: Lot 33, Square 839, and is worth the sum of six thousand Dollars, that he owns said property in fee simple, free and unincumbered by deed of trust, mortgage, judgment, or otherwise.

(Signed) SAMUEL H. WALKER.

Witnesses:

——.
——.

Subscribed and Sworn to before me, this 27th day of November A. D. 1907.

(Signed) JOSEPH Y. POTTS,
Clerk Police Court, District of Columbia.

33 *Recognizance.*

In the Police Court of the District of Columbia, the 27th day of January, 1908.

On Writ of Error to the Court of Appeals of the District of Columbia.

THE UNITED STATES
vs.
LOUIS R. PFEIFFER.

Information for Violation of Section 869, Code D. C.

The defendant, and Samuel H. Walker his surety, acknowledge themselves to be indebted to the United States in the sum of one hundred Dollars, lawful money of the United States, to be levied of their and each of their goods and chattels, lands and tenements upon condition, nevertheless, that whereas the said defendant was on the twenty first day of December, 1907, convicted in the Police Court of the District of Columbia, of Violation — Section 869, D. C. Code, and it was thereupon adjudged by said Court that said defendant be imprisoned three months in Jail and to pay a fine of Five Hundred Dollars, and in default, to be imprisoned one hundred and eighty days in Jail additional; and whereas the said defendant has taken exceptions to the rulings of the Court upon matters of law in said trial and having given notice in open court of his intention to apply for a writ of error to a justice of the Court of Appeals of the District of Columbia: Now, therefore, if said defendant shall, in the event of a denial — his application for said writ of error, within five days next after the expiration of ten days from date hereof, appear in the Police Court and abide by and perform its judgments in the premises, and in the event of the granting of such writ of error he shall appear in the Court of Appeals of the District of Columbia and prosecute said writ of error and abide by and perform its judgments in the premises, then this recognizance to be void and of no force.

JANUARY 27, A. D. 1908.

I certify that the above recognizance was acknowledged in open Court, the twenty seventh day of January, 1908; and that the sufficiency of said surety was approved by the Judge of said Police Court. Witness my hand and the seal of said Court.

(Signed) BERNARD F. LOCRAFT,
Dept. Clerk of Police Court, District of Columbia.

[Endorsed:] No. 155635. Police Court, District of Columbia. Recognizance on Writ of Error to the Court of Appeals, D. C. The

United States *vs.* Louis R. Pfeiffer. $100. Samuel H. Walker, Surety. Taken the Twenty seventh day of Jan. ——. Bernard F. Locraft, Dep. Clerk Police Court, D. C.

Police Court District of Columbia, Twenty seventh day of January, 1908.

Samuel H. Walker being duly sworn says that he is worth, over and above all his debts and liabilities the sum of One Hundred Thousand Dollars in real estate, situated in the District of Columbia; that a part of the real property so owned by him is described as follows: Lot 33—Square 839, and is worth the sum of Six Thousand dollars. That he owns said property in fee simple, free and unincumbered by deed of trust, mortgage, judgment, or otherwise.

(Signed) SAMUEL H. WALKER.

Witnesses:

(Signed) BERNARD F. LOCRAFT.

Subscribed and sworn to before me, this Twenty seventh day of January, 1908.

(Signed) BERNARD F. LOCRAFT,
Dep. Clerk Police Court, D. C.

34 (*Copy of Docket Entries.*)

No. 155,635.

In the Police Court of the District of Columbia, November Term, A. D. 1907.

UNITED STATES
vs.
LOUIS R. PFEIFFER.

Information for Violation of Section 869 of the Code of Law for the District of Columbia.

Defendant arraigned Tuesday, November 26, 1907. Plea: Not guilty. Jury trial demanded.

Verdict: Guilty as to the second count of the information; not guilty as to the first and third counts of said information.

Exceptions taken to rulings of the Court on matters of law and notice given by the defendant in open Court at the time of the several rulings of his intention to apply to a Justice of the Court of Appeals of the District of Columbia for a writ of error.

Notice given by defendant of the filing of motions for a new trial and in arrest of judgment.

November 27, 1907.—Recognizance in the sum of five hundred dollars entered into to appear in the Police Court; Samuel H. Walker, surety.

November 29, 1907.—Motions for a new trial and in arrest of judgment filed.

Bill of exceptions filed.

December 31, 1907.—Motions for a new trial and in arrest of judgment argued and overruled.

Judgment: Guilty as to the second count of the information; not guilty as to the first and third counts of said information.

Sentence: To be imprisoned three months in Jail and to pay a fine of five hundred dollars, and, in default, to be imprisoned one hundred and eighty days in Jail additional.

Appeal to the Court of Appeals noted.

Bill of Exceptions settled, signed and sealed.

January 21, 1908.—Writ of error received from the Court of Appeals of the District of Columbia.

January 27, 1908.—Recognizance in the sum of one hundred dollars entered into on writ of error to the Court of Appeals of the District of Columbia upon the condition that in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days, appear in the Police Court and abide by and perform its judgment, and that in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals and abide by and perform its judgment in the premises; Samuel H. Walker, surety.

35 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, Joseph Y. Potts, Clerk of the Police Court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 34 inclusive, to be true copies of originals in cause No. 155,635 wherein the United States is plaintiff and Louis R. Pfeiffer defendant, as the same remain upon the files and records of said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, the City of Washington, in said District, this 1st day February, A. D. 1908.

[Seal Police Court of the District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

36 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Ivory G. Kimball, Judge of the Police Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Police Court, before you, between United States of America, plaintiff and Louis R. Pfieffer, defendant a manifest error hath happened, to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full

and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Seth Shepard, Chief Justice of the said Court of Appeals, the 21st day of January, in the year of our Lord one thousand nine hundred and eight.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by
SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

[Endorsed:] Filed Jan. 21, 1908. Joseph Y. Potts.

Endorsed on cover: District of Columbia police court. No. 1862. Louis R. Pfieffer, plaintiff in error, *vs.* United States of America. Court of Appeals, District of Columbia. Filed Feb. 3, 1908. Henry W. Hodges, clerk.

In the Court of Appeals of the District of Columbia.

JANUARY TERM, 1908.

LOUIS R. PFIEFFER,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

WM. E. AMBROSE,
KAPPLER & MERILLAT,
Attorneys for Plaintiff in Error.

J. D. MILANS & SONS, LAW PRINTERS, 615 E STREET, N. W., WASHINGTON, D. C.

In the Court of Appeals of the District of Columbia.

JANUARY TERM, 1908.

LOUIS R. PFIEFFER,
Plaintiff in Error

vs.

UNITED STATES OF AMERICA.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

This is an appeal by the plaintiff in error, Pfieffer, from a conviction in the Police Court of the District of Columbia of violation of Section 869 of the Code of the District of Columbia, making it a criminal offense for any person "in the cities of Washington and Georgetown, in the District of Columbia, or within said District within one mile of the boundaries of said cities to bet, gamble or make books or pools on the result" of any races of any kind. The maximum sentence of three months in jail and a fine of $500 was imposed (Trans. Rec., p. 21).

The case comes here on writ of error based on the ground that there is a legal insufficiency of evidence to support the verdict of guilty rendered by the jury and the judgment pronounced thereon, plaintiff in error con-

tending the court should have directed the jury to return a verdict of not guilty, both at the close of the Government's case and of the whole case.

Statement of the Case.

The plaintiff in error, Louis R. Pfieffer, was tried in the Police Court last November on an information in three counts. He was convicted on the second count which, not naming Pfieffer in the charging part of the information, though named in the concluding presentation, alleged on the oath of one Vermillion "that said———, late of the District aforesaid" on June 15, 1907, did "within the City of Washington, in the said District of Columbia, unlawfully bet and gamble the sum of ten dollars" with one John Simmons on the result of a running horse race (Rec., p. 2). The district attorney abandoned the third count and the jury returned a verdict of not guilty on the first count, which alleged the making of a bet with one David Smith. The arrest of Pfieffer was the result of a campaign made by the *Evening Star*, a newspaper of this city (p. 5), and the police during the summer of 1907 against handbook men—persons who, it is alleged make bets on the streets or in saloons or like places on horse races and enter the same on a pad or other record.

The entire testimony bearing on the alleged offense of which plaintiff in error was convicted is comprised within pages 7 to 13 of the record. John Simmons for the prosecution testified that he had a conversation on 10th Street with Pfieffer and asked what it was about replied, "I just gave him a little bet." Asked to explain he said, "I made a little bet on a horse." He did not remember

the horse, where the race was held or whether he had bet ten, fifteen or twenty dollars.

Cross-examined, witness said he was a horse trader. He could not tell whether there was to be a race run that day or not.

"Q. You cannot tell what you told him to do with the money?

A. No, sir.

Q. You cannot tell whether you told him to take that money somewheres and place it for you?

A. I do not remember, I just gave Mr. Pfieffer the money and I walked out and did not come back any more because I did not win.

Q. You asked him to place your money for you?

A. Yes.

Q. And you do not know whether Mr. Pfieffer took your bet to somebody else of your own knowledge?

A. I gave the money to Mr Pfieffer."

In answer to further inquiries witness said all he remembered was of giving Pfieffer money.

"Q. You don't know or remember whether he was the one who made the bet or whether you simply gave it to him to place for you?

A. No, sir."

Witness said to a juryman that he could not remember whether he made one bet or two.

The court refused to take the case from the jury and after exception noted defendant Pfieffer testified that he was a cafe manager and denied he had bet or gambled with John Simmons. He never had made a hand book or taken bets for the reason that he was not able financially. Witness said he himself sometimes bet on the races, go-

ing to Bennings during the racing in the District and at other times to Westport near Baltimore. Simmons at one time had come up to him and "asked me if I knew where he could get a bet and I said there was nothing doing around and I told him I was going to Baltimore, down to Westport, and he asked me if I would take a bet for him with me. The pool rooms were running at Westport then." Witness further stated he could not tell what Simmons believed but he had told him he was going to Westport and would put the money down there for him. He bet on the races very often himself but had not money enough to back a hand book as it would take at least six thousand dollars.

Much of the testimony taken related to an alleged bet between one Smith, and Pfieffer, but on this count the jury acquitted plaintiff in error while convicting him on the second count. The court overruled a motion in arrest of judgment and sentenced Pfieffer under the second count to three months in jail and $500 fine. Counsel claim that the record shows no evidence of violation of the statute and the entire record being befcre the court as stated in the bill of exceptions (p. 17), asks this court to reverse the action of the trial court on the ground of the insufficiency of the testimony.

Assignments of Error.

1. That the court erred in not directing the jury to return a verdict in favor of plaintiff in error (defendant below) at the close of the Government's case.

2. That the court below erred in not directing a verdict for plaintiff in error at the close of the whole case.

3. That the court below erred in overruling the motion in arrest of judgment filed by plaintiff in error (Rec., p. 17) and in not holding the evidence was insufficient to prove the commission of the offense alleged.

4. That the court below erred in not setting aside the verdict on the ground of the insufficiency of the evidence to sustain it.

5. That the court below erred in not arresting the judgment on the ground that the second count did not accuse the plaintiff in error of gambling with Simmons.

6. That the court erred in not holding the act under which the prosecution was had, unconstitutional.

Argument.

It needs no citation of authorities that in order to sustain a conviction in a criminal case, the offense must be proved beyond a reasonable doubt. It is equally settled law that to sustain a conviction all the elements of the crime charged must be proved beyond a reasonable doubt, and that a reasonable doubt as to a material fact essential to the defendant's guilt will inure to his benefit and entitle him to an acquittal.

Com. *vs.* Maguire, 108 Mass., 469.
Jones *vs.* State, 107 Ala., 93.
Lawless *vs.* State, 4 Lea (Tenn.), 173.
Peo. *vs.* Eckert, 19 Calif., 603.
Clark *vs.* State, 30 Tex. App. 402.
McCoy *vs.* People, 175 Ill., 224.
U. S. *vs.* Wright, 16 Fed., 112.
Peo. *vs.* Niles, 44 Mich., 612.

While the verdict of the jury is entitled to due weight, still if upon a view of the whole evidence it appears insufficient and leaves a reasonable doubt, or as in this case shows no commission of the offense, by direct testimony or circumstantial evidence, it is the duty of the trial court or the appellate tribunal to refuse to sustain the verdict.

In the instant case the evidence on behalf of the Government is vague, uncertain and indefinite, and equally as consistant with proper conduct as with wrongdoing, while the defendant's testimony, and he was not impeached directly or circumstantially, and therefore is entitled to credit, was direct and positive in refutation of the offense charged. The Government's witness as to the offense charged in the second count testified on a view of his whole evidence to nothing more than that he had given some indefinite amount of money to the defendant, but was deficient as to what was to be done with the money—whether the defendant was to take the money somewheres and place it for him he did not remember, but later he replied "yes" when this question was put—"You asked him to place your money for you?" No evidence whatever was offered as to what horse, what race or what odds formed part of the wager. There was neither subject-matter to the contract of wager nor principals.

In Jordan agt. Kent 44 How. Pr. Rep., (N. Y.), 206, the court said :

> "To every wager there must be two or more contracting parties having mutual or reciprocal rights in respect to the money or other things that are wagered, and that each of the parties shall

> jeopardize something and have a chance to make something or recover the thing bet upon the determining of the contingent or uncertain event in his favor."

There is nowheres in the prosecution's case any evidence plaintiff in error jeopardized anything or stood to win anything or that there was any agreement or contract between him and Simmons. Supplemented by plaintiff in error's testimony, the entire case amounts to this: that Simmons wanted to bet on some race and making known his wants to Pfieffer and learning he could not bet in Washington and that Pfieffer was going to a pool room near Baltimore where betting is lawful, Simmons gave plaintiff in error the money to place or bet for him on some race and lost. Plaintiff in error acquainted Simmons with the fact he (plaintiff in error) was not taking the bet (using the word taking in the technical sense of gambling or betting that Simmons would lose), but would merely accomodate him by placing his money for him (Simmons) as he (Pfieffer) was going to Westport (near Baltimore) himself to bet there. The trial judge in his charge seems to have recognized this messengership was not an offense under the code and yet it is the whole of what the testimony proves or tends to prove. There is absolutely no evidence of other than friendly act (or unfriendly since the bettor Simmons did not pick the winner); nothing to show plaintiff in error himself risked anything or gained anything nor could gain or lose anything by his act. The code condemns betting in Washington. The betting occured in Westport, Md. The code punishes the party betting. There is no evidence plaintiff in error bet with Simmons. The code does not make

it illegal for one friend to take another friend's money to a foreign betting room. See Jordan agt. Kent, *supra;* McQuesten *vs.* Steinmetz, 58 Atl. Rep., 876.

Where defendant receives money in New Hampshire as agent of certain persons to telegraph the same to certain persons in New York who were there to wager the same on horse races as directed, the defendant to receive a commission but no share in profits or losses he does not bet or gamble in this State. A bet like an ordinary contract involves a concurrence of wills. There must be an offer and an acceptance thereof in accordance with its terms; and the acceptance will not be complete until it is actually or constructively communicated to the party making the offer.

Lescallet *vs.* Com. 89 Va., 878.

Where an offer to bet is telegraphed by a person in one city to a person in another and the latter accepts by telegraph the betting is done in the city where accepted.

A penal statute must be construed strictly and if less comprehensive than the legislature intended it, it is for that body and not for the courts to supply the defect by a suitable amendment.

If the accused had taken the money of the witness and carried it in person to the track and there gotten a third person to bet it on the designated horse it could hardly be contended that that would be sufficient proof that the horse in question (that in Virginia where the odds were posted and the money taken) was used in violation of the statute.

See also Quarles *vs.* State, 5 Humph. (Tenn.), 561.

The words of the court in Jackson *vs.* State, 117 Ala., 157, are most apropos to the case at bar. There the court said: "It does not appear from the evidence that either the defendant or any one of the persons who played in the game of cards bet anything on the game. From aught appearing parties not engaged in the game may have done the betting." There is no evidence in this case Pfieffer did any betting with Simmons or anyone else.

If it could be contended by a strain of the testimony that the jury might have inferred from the acquiescence of witness Simmons when the prosecuting attorney by his question put the word bet in witness' mouth and that this court therefore should be bound by the finding it would be sufficient answer under even such a strain of the testimony to say that Simmons is an accomplice and his testimony is uncorroborated and hence insufficient. Simmons clearly was an accomplice. His illegal action was necessary to accomplish the making of a bet, and if the Government's contention be correct he was an accomplice in the violation of the law and liable to trial and conviction.

Wharton on Crim. Evid. Sec., 440, defines an accomplice as one who knowingly, voluntarily and with common intent with the principal offender, unites in the commission of a crime. This court in Yeager *vs.* U. S., 16 App. D. C., 360, says: "Liability to indictment under ordinary conditions, is a reasonable test of the legal relation of the party to the crime and its perpetrator."

Davidson *vs.* State, 33 Ala., 353, holds one who plays poker with others an accomplice, and the term as applicable to misdemeanors as to felonies.

See also Reid *vs.* State, 36 Ala., 280.

In the case at bar two parties were necessary, and Simmons as bettor was absolutely essential before there could be a bettee. It is therefore distinguishable from Stone *vs.* State, 3 Tex. App., 677, where all were principals.

Plaintiff in error likewise was entitled to an arrest of judgment for the information on which he was convicted is a complete count and is fatally defective in not naming him or any one as the party betting with Simmons.

Respectfully submitted,

WM. E. AMBROSE,
KAPPLER & MERILLAT,
Attorneys for Plaintiff in error.

In the Court of Appeals.

OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1908.

No. 1862.
No. 24. Special Calendar.

LOUIS R. PFEIFFER, PLAINTIFF IN ERROR,

vs.

UNITED STATES OF AMERICA.

Brief in Behalf of Defendant in Error.

DANIEL W. BAKER,
U. S. Attorney, D. C.
STUART McNAMARA,
Assistant U. S. Attorney, D. C.

THE LAW REPORTER PRINTING CO., WASHINGTON D. C.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1908.

No. 1862.
No. 24. Special Calendar.

LOUIS R. PFEIFFER, PLAINTIFF IN ERROR,

vs.

UNITED STATES OF AMERICA.

Brief in Behalf of Defendant in Error.

Louis R. Pfeiffer was arraigned in the Police Court of the District of Columbia, November 26, 1907, charged with violating section 869 of the Code of the District of Columbia, on an information containing three counts. The first count charged that the plaintiff in error made a bet in the city of Washington, District of Columbia, with one David Smith on the 3d day of July, 1907, of the sum of $1, and on the result of a running race of horses. The second count charged the plaintiff in error with betting the sum of $10 with one John Simmons, the bet being made on November 26, 1907, in the city of Washington, on the result of a certain running race of horses, and the third count charged the plaintiff in error with betting and gambling divers sums of money with divers persons both being unknown to the Government, in the city of Washington, and on the result of certain running races of horses.

The information, as originally framed, contained but the first and third counts. At the time of the arraignment the Government introduced the present information containing three counts, the change consisting in the insertion of a second count charging the betting with one John Simmons, and thus charging the betting with two individuals—Smith and Simmons. The betting with Simmons could have been introduced in evidence under the second count, charging the betting with divers persons, but in order to be more specific and to apprise the defendant, the Government specified the charge by the insertion of the second count and making the general count No. 3 in the information (Rec., p. 4).

The Government thereupon called John Simmons, who testified that he knew plaintiff in error and saw him some time in June or thereabouts in the summer of 1907. He saw him on Tenth street and had a conversation with him and "gave him a little bet, that was all" (Rec., p. 7). Having been asked what he meant by saying that he gave him a little bet, the witness Simmons answered that he made a little bet on the horses, he didn't remember the horses and didn't know exactly where the race was, but that it might be in Canada; it was a running race and he bet $10, $15, or $20. He identified the plaintiff in error as the man with whom he made the bet at that time (Rec., p. 7). This bet was made on Tenth street, between D and E streets, in the city of Washington, District of Columbia, and the place was a cigar store (Rec., p. 7). On cross-examination the witness said he simply gave the money to the plaintiff in error and didn't come back any more because he didn't win (Rec., p. 8). He again identified the plaintiff in error as the man with whom he (witness) made the bet (Rec., p. 9).

The Government thereupon rested and counsel for the plaintiff in error moved the court to instruct the jury to find for the defendant. The motion was over-

ruled and the plaintiff in error thereupon proceeded to offer evidence and to go into his case (Rec., p. 9). The plaintiff in error testified that he had not bet with Simmons; that he had not made a handbook, not having any money to do so; that he had at times taken money to Benning and to a pool room in Westport, near Baltimore (Rec., pp. 9 and 10). That he could only explain the testimony of Mr. Smith by saying that he (Smith) wanted "to get down some money, and I (Pfeiffer) was going to Benning last spring or was going to Baltimore—Westport—and he asked me if I would take the money over for him," and the witness said that he had taken it over for him (Rec., p. 10). He didn't bring back any money, as Smith had never picked a winner. He could not explain how Simmons had come to find him in order to make a bet (Rec., p. 12). The Government then introduced some other evidence in rebuttal, in reference to the first count (Rec., p. 13).

The third count was abandoned by the Government and the case went to the jury on the first and second counts. No motion was made by the plaintiff in error at the close of the whole case to instruct the jury to find for the defendant (Rec., p. 13). On the contrary the plaintiff in error, through his counsel, stated that he had no prayers to offer and would leave it to the court to instruct the jury on the whole matter instead of offering specific prayers. The court thereupon charged the jury (Rec., p. 13), and the jury convicted the plaintiff in error on the second count and acquitted him on the first. The plaintiff in error filed motions for new trial and in arrest of judgment (Rec., p. 17), which being overruled the plaintiff in error was sentenced to pay a fine of $500, with three months in jail, and in default of fine to be imprisoned one hundred and eighty days additional, to which judgment this writ of error has been prosecuted.

ARGUMENT.

It would appear at the outset that there is no jurisdiction in this court to review the assignments of error urged by the plaintiff in error. The matters complained of by the plaintiff in error are those which are solely within the cognizance of the jury, within the trial court, and have to do with the question whether the evidence offered by the Government or the evidence offered by the defendant is entitled to greater weight by the triers of the facts in the case. The appeal raised no question beside this. It is indisputable from the record that the Government offered distinctive evidence that the defendant below had bet with Simmons as charged in the second count. The defendant below took the stand and denied that he had made this bet, and explained it by saying that although he had received the money he did not bet himself, but placed it either at Benning or at Westport where betting was being conducted. The issue was between these two witnesses. The jury have decided this issue. As in all cases involving a contradiction between witnesses, the appellate court is devoid of jurisdiction to consider the finding of fact, for they are equally devoid of the facilities for making such decision, and which are possessed by the court below. The appearance of the respective witnesses, their manner on the stand, the visual character of the testimony, the obvious truth suggestive or falsity suggestive elements of each witness, which are before the jury and which it is their province and their privilege to consider and weigh, are not before the appellate court.

There can be no point made that there was not enough evidence in the case to go to the jury. But the point is raised that the evidence was not sufficient to prevail against the testimony of the defendant. This claim of

the plaintiff in error shows that his whole case is urged upon grounds which are beyond the jurisdiction and cognizance of an appellate court.

We will now proceed to consider the assignments of error raised by the plaintiff in error in his brief.

First Assignment of Error.

It is urged that the court erred in not directing the jury to return a verdict in favor of the plaintiff in error at the close of the Government's case.

To entitle this assignment to any consideration, it should appear that, at the close of the Government's case, there had not been introduced enough evidence to justify the case going to the jury. But the record shows that the Government had proved by the direct testimony of the witness Simmons that he had made a bet with the plaintiff in error; that the bet was made on the horses; that it was a running race, and might be in Canada, and that $10, $15, or $20 was the amount which the witness Simmons had bet with the plaintiff in error, whom he identified in the court room. The bet was made at a cigar store on Tenth street, between D and E streets, in the city of Washington, District of Columbia (Rec., p. 7).

There can be no doubt that this was sufficiently proved to make out a case of simple betting, which the law denounces as a crime in the city of Washington, under section 869 of the Code. This section provides—

> "that it shall be unlawful for any person, etc., in the cities of Washington and Georgetown, in the District of Columbia, and within said District within one mile of the boundaries of said cities to bet, gamble, or make books or pools on the result of any trotting race or running race of horses, etc., or race of any kind."

At this stage of the case the Government had proved that Simmons had bet $10, $15, or $20 with the plaintiff in error on the result of a running race of horses, and that the bet was made within the limit proscribed in the statute.

Plaintiff in Error's Motion to Instruct the Jury, if Ever Good, was Lost by His Offering Evidence in His Own Behalf.

Although plaintiff in error was not entitled to have his motion granted for the reasons above set forth, that there was ample evidence to justify the case going to the jury, it is further submitted that even if the motion were entitled to more serious consideration, it was abandoned and lost when he declined to rely on his motion, and to have stood his ground, and instead waived it and put in evidence in his own behalf. By so doing, he lost the advantage of any motion he may have made.

> "At the conclusion of the testimony for the prosecution and again at the conclusion of all the testimony, motion was made on behalf of the appellant that the jury should be directed to render a verdict in her favor on the ground that the prosecution had failed to make out a case against her. The first motion was waived of course by the defendant going into testimony and both are equally untenable on the record."
>
> De Forrest *vs.* United States, 11 App. D. C., 458.

> "Now need we notice the motion for judgment in favor of the defendant, which was interposed at the conclusion of the testimony by the prosecution and which was denied, since the defendant abandoned it by proceeding thereafter to take testimony in his own behalf and the questions sought to be raised thereby are sufficiently raised by rulings thereafter made."
>
> Ullman *vs.* D. C., 21 App. D. C., 241.

Second Assignment.

It is urged in the second assignment of error that the court below erred in not directing a verdict for the plaintiff in error at the close of the whole case. But the plaintiff in error forgets that no motion was made to have the court direct a motion in his favor at the close of the whole case. There is accordingly no exception taken to the courts failing to do this, and this assignment of error, it is submitted, is not tenable on this appeal. As the record shows, plaintiff in error through his counsel announced that he had no prayers to offer and no instructions he would desire to be given to the jury, but distinctly stated that he agreed the court should instruct the jury and cover the matter in his own way (Rec., p. 13).

The motion must be made to direct a verdict and the exception taken to the refusal thereof to entitle the aggrieved party to have the action of the trial court reviewed on appeal.

Lincoln *vs.* Power, 151 U. S., 431.
Loring *vs.* True, 104 U. S., 225.
Evans *vs.* Schoonmaker, 2 App. D. C., 62.

In the absence of the motion, at the close of the whole evidence, to find for the defendant, it will be presumed that there was sufficient evidence to warrant the submission of the case to the jury.

Hansen *vs.* Boyd, 161 U. S., 397.

So, where counsel asks the court to charge on certain points, there is an acquiescence in the submission of the case to the jury.

Hartford Life Insurance Co. *vs.* Unsell, 144 U. S., 439.

The general sufficiency of the evidence to sustain a verdict is not reviewable on appeal, unless at the close of the whole case the party aggrieved has asked for a peremptory instruction to take the case from the jury.

Insurance Company *vs.* Frederick, 58 Fed., 144.
Coal Co. *vs.* Ingraham, 70 Fed., 219.
Drexel *vs.* Teal, 74 Fed., 12.

In fact, the failure to move the court at the end of the whole evidence to instruct the jury in his behalf is a waiver of the motion made by defendant at the end of the plaintiff's case to instruct the jury for the defendant.

Gaylord *vs.* Gallagher, 20 N. Y. Sup., 682.

Third Assignment.

The plaintiff in error contends under this assignment that the court below erred in overruling the motion in arrest of judgment filed by the plaintiff in error and in not holding that the evidence was insufficient to prove the commission of the offense alleged.

This ground is twofold, and complains of the failure of the court below to grant the motion in arrest of judgment and the motion for new trial. The latter half is treated under the fourth assignment of error and will be covered in the consideration of that assignment. As to the first, that the court erred in not granting the motion in arrest of judgment, an inspection of that motion (Rec., p. 17) will immediately commend the decision of the trial court in overruling the same. The first ground of this motion charges that the information was insufficient and invalid and was filed at the trial without giving the defendant an opportunity to demur or to prepare for his trial. The latter part of

this ground is improper as a basis for motion in arrest for the reason that such a motion is addressed purely to the record. In so far as the charges that the information is insufficient and invalid are concerned, nothing need be said except that it charges an act of betting which the law has denounced in section 869 of the Code as a crime. It does appear that in the information, in one place in the second count, the name of the plaintiff in error was omitted. The defendant below went to trial and contested this information as to the facts therein averred. No exception to this was taken at the arraignment and the defendant pleaded not guilty to the information.

The motion in arrest also charges as the second ground in its support that the act on which the information is based is unconstitutional in that it unreasonably discriminates against particular persons residing in the District of Columbia, and denies the defendant and others the equal and due protection of the law. This ground is apparently frivolous and fanciful. It does not appear from counsel's brief that it will be seriously urged, as it is omitted from consideration. It is presumed that it relates to the restriction of simple betting to that part of the District of Columbia outside of the mile limit. It is well settled at this day that in the exercise of its police power the legislature can restrict certain forms of amusement or occupations possessing injurious possibilities to the public within a defined area, provided there is no discrimination made against the person, but only against the thing restricted. Obviously this act does not discriminate against any person, but leaves them all free to go in or out of the mile limit.

Barbier *vs.* Connolly, 113 U. S., 27.
Loon Hing *vs.* Crowley, 113 U. S., 703.

This Objection is Not Available After Verdict.

This technical defect of omitting the name from one blank, where it should be found, while proper matter of objection in a motion to quash, is not a basis of a motion in arrest of judgment.

> "Thus an indictment which, after naming the defendant, left a blank instead of naming him in the charging part of the indictment was held not subject to attack after verdict."
>
> Price *vs.* State, 67 Ga., 723.

The alteration of the name of the accused does not vitiate the indictment where he is identified and goes to trial under the indictment, as the person who committed the crime.

State *vs.* Turner, 25 La. An., 573.

The entire omission of the caption is not a ground for motion in arrest of judgment.

State *vs.* Thibeau, 30 Vt., 100.
State *vs.* Petersen, 2 La. An., 921.

And, in general, such technical defects are not available after verdict.

Miller *vs.* State, 50 Alabama, 155.

The omission of the signature of the foreman, where statute requires it, is not good ground for motion in arrest.

State *vs.* Mertens, 14 Mo., p. 94.

Although the caption is not part of the indictment, yet, after verdict, the indictment may be aided by the caption, at least so far as any technical defect in the indictment may be urged as basis for motion in arrest.

Anderson *vs.* State, 104 Ind., 467.
United States *vs.* Boyden, 1 Lowell, 266.
State *vs.* Borali, 71 Pacific, 532 (Nev. 1903).

And in the case at bar the information was aided by the caption also.

In the third ground of the motion in arrest it is urged that the verdict of the jury was based on evidence improperly admitted. This is not a ground for a motion in arrest and is therefore not to be considered.

Bright *vs.* State, 90 Ind., 343.
Powe *vs.* State, 48 N. J. L., 34.
Com. *vs.* Eurley, 45 Pa. St., 392.
Green *vs.* State, 29 S. W., 1072 (Tex. Cr. App., 1895).

The claim that there is not sufficient evidence to go to the jury is not proper ground for motion in arrest.

State *vs.* Wilson, 121 N. C., 650.
Barnard *vs.* State, 88 Wis., 656.
State *vs.* Snow, 74 Me., 354.
Woodbury *vs.* Shawneetown, 74 Fed., 205.

The fourth ground states that the evidence does not show any crime within the meaning of the act, in that the evidence fails to show either that any bet was made or gambling carried on, and that it fails to show that defendant made any bet or gambled. Even counsel's own conception of what the evidence should show is not warranted by law, but the important observation on this ground is that what the evidence does or does not show is not a proper basis for a motion in arrest. This motion is addressed solely to the record.

The fifth ground claims that the information sets forth no crime or misdemeanor known to the law. This needs no reply.

Fourth Assignment.

It is urged in the fourth assignment that the court below erred in not setting aside the verdict upon the ground of the insufficiency of the evidence to sustain it.

This was the motion made for a new trial because of the failure of the evidence to support the information. It is now claimed that the court erred in refusing this motion. In other words it is sought to have this court review the ruling of the trial court in overruling a motion for new trial. There is no jurisdiction in this court to entertain such an appeal.

Blitz *vs.* U. S., 153 U. S., 308, 312.
Smith *vs.* Mississippi, 162 U. S., 592, 601.
Addington *vs.* U. S., 165 U. S., 184, 185.
West *vs.* U. S., 20 App. D. C., 347, 351.
Paolucci *vs.* U. S., 36 Wash. L. Rep., 2.

Fifth Assignment.

In the fifth assignment of error plaintiff in error states that the court erred in not arresting judgment on the ground that the second count did not accuse the plaintiff in error of gambling with Simmons. This ground as stated is objectionable and untenable. The word gamble is different in legal significance to the word bet, and both are denounced separately by section 869. It is no ground, therefore, that the information is bad which charges that the defendant bet, merely because it did not charge also that the defendant gambled. Besides the motion in arrest (Rec., p. 17) does not contain such a ground as is made the ground of this fifth assignment of error. The matter was not, therefore, urged to the court for its consideration, which is now urged to this appellate bench as the error of the court below.

The statement of this assignment, however, is false. The second count did charge the plaintiff in error with betting with one John Simmons. He pleaded to it and testimony was given in support of and against this count of the information (Rec., pp. 7, 8, 9).

Sixth Assignment.

This assignment of error to the effect that the court erred in not holding the act under which the prosecution was had unconstitutional is frivolous, and apparently will not be urged on appeal.

There is nothing before this court except the contention that the judgment below should be reversed because the evidence adduced by the Government is not entitled to prevail over the evidence adduced by the defendant below. As stated at the outset of this brief, this contention would be proper only in the event of this court resolving itself into a nisi prius tribunal and of removing from the function of the court and jury the decision of fact which the law has absolutely placed solely within their cognizance. It is now so abundantly settled that courts of error will not entertain an appeal predicated on the alleged erroneous decision of the jury or merits of the testimony, and the respective values of the evidence offered by the Government and by the defendant, that the matter is wholly removed from the province of debate.

On appeal the court can not consider the question of the preponderance of the testimony.

Brown *vs.* Wash. & Geotn. R. R., 11 App. D. C., 37.
Wash. & Geotn. R. R. *vs.* Adams, 11 App. D. C., 396.

It is therefore respectfully submitted that there is no error in the record, and the judgment below should be affirmed.

DANIEL W. BAKER,
U. S. Attorney, D. C.
STUART McNAMARA,
Assistant U. S. Attorney, D. C.